

Another Year in The Rearview Mirror: Legal Update on Labor & Employment Law Developments

Bruce Schroeder
Summit Law Group

General Assessment

- One year down, 6 to go
- Washington continues on liberal path
- More contracts headed to interest arbitration

Due Process

- Loudermill x 2
- Garrity in Loudermill

Discrimination Law Updates

- Necessary medical support for accommodation request
- Evidence of legitimate basis for termination trumps suspicious timing
- Timing of medical exam in hiring process
- MMPI as a medical test
- Undiagnosed condition may support Washington discrimination claim

FMLA Developments

- FMLA credit for light duty work
- Release of FMLA claims
- “Care” for family member: “reach out and touch someone”
- FMLA and return to work requirements

PERC Decisions: Bargaining Obligations

- Skimming
- Bargaining under deadlines
- When can you just say “no”
- Bargaining vs. employment-management committees
- “What if” proposals and regressive bargaining
- Maintaining status quo on health insurance increases

PERC Decisions: Mandatory Subjects of Bargaining

- Employee training
- Imposition of state or federal mandated deductions
- Minimum staffing
- Parity clauses
- Union release time

PERC Decisions: Bargaining Waivers

- Waiver by contract
- Waiver by inaction vs. fait accompli

PERC Decisions: Misc Developments

- Duty to provide information
- Unlawful interference
- Weingarten issues
- What is a confidential employee
- Strikes as a ULP
- Proliferation of small bargaining units

Misc NLRB Developments

- Duty to bargain installation of surveillance camera
- Release of confidential medical information

Trends in Bargaining

- Increased reliance on interest arbitration or mediation
- Major issues
 - Health and welfare cost containment
 - Control of employee absenteeism
 - Limits on part-time employees
 - Fixed route vs. paratransit wage disparities

State Statutory Developments

- Immunity for reference calls
- Reporting obligations for CDL test results
- Family Care Act revisions
- Public Disclosure Act changes